

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON and PATRICK STEARNS,

ORDER

Petitioners,

08-cv-390-bbc

v.

RICK RAEMISCH, PETER HUIBREGTSE,  
MARK HEISE, KEVIN KALLAS, JOHN BETT,  
KATHRYN ANDERSON, HELEN KENNEBECK,  
TOM GOZINKI, WELCOME ROSE, JOHN & JANE  
DOES, MONICA HORNER, GARY BOUGHTON,  
DAVID GARDNER, VICKI SEBASTIAN, ROBERT  
HABLE, SARAH MASON, BRIAN KOOL, LESLIE  
ROWN, CAPT. JENNIFER GERL, CAPT. GILBERGE,  
SGT. ROBINSON, THOMAS TAYLOR, MATTHEW  
SCULLION, DANA ESSER, SGT. COOK, CAPT. SHARPE,  
CO II WETTER, CO CAYA, JOANI SHANNON-SHARPE,  
DR. RUBIN-ASCH, DR. STACEY HOEM, TRISHA  
LANSING, SGT. KUSSMAUL, SGT. STOHELSON,  
CO HULCE, J. HUIBREGTSE, DANIEL LEFFLER,  
TRACEY GERBER and SGT. SICKINGER,

Respondents.

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This court entered a final order on September 22, 2008, denying petitioner Titus Henderson's request for leave to proceed in forma pauperis on his claims in this case because he has struck out under 28 U.S.C. § 1915(g) and has failed to raise any claim showing

imminent danger of a serious physical injury. Now Henderson has filed a notice of appeal. Because he has not paid the \$455 fee for filing an appeal, I presume he wishes to proceed in forma pauperis.

However, petitioner Henderson cannot proceed in forma pauperis on appeal because he has struck out under 28 U.S.C. § 1915(g). As I have previously stated, strikes have been recorded against him in at least four cases: Henderson v. Belfuel, 03-cv-729-bbc (W.D. Wis. Mar. 16, 2004); Henderson v. Huibregtse, 05-cv-157-bbc (W.D. Wis. Apr. 25, 2005); Henderson v. Brush, 06-cv-12-bbc (W.D. Wis. Mar. 6, 2006); and Henderson v. Morris, 06-c-407-bbc (W.D. Wis. Nov. 14, 2006). Because Henderson has accumulated three strikes, so long as he is incarcerated he cannot file any new lawsuit or an appeal without prepaying the filing fee unless he can show that he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). As stated in this court's September 22, 2008 order, Henderson attempted to raise such a claim in his complaint by alleging that he has developed acid reflux diseases because he has not been provided with "cleaning supplies" of an unidentified nature since 2003 and speculating that his condition will deteriorate into cancer and surgical removal of portions of his bowels. However, as I found earlier, this claim is so vague and improbable that a finding cannot be made that he faces an imminent threat of danger that is real and not imagined. Because Henderson has not made the required showing of imminent danger of a serious physical injury for the purposes of proceeding in forma

pauperis on appeal, he cannot take advantage of the initial partial payment provision of § 1915. He owes the \$455 fee in full immediately. He may delay payment for two reasons only: 1) his complete destitution; or 2) if he challenges in the court of appeals within thirty days of the date he receives this order the decision to deny his request for leave to proceed in forma pauperis on appeal because of his § 1915(g) status. Fed. R. App. P. 24(a)(5). If the court of appeals decides that it was improper to deny petitioner Henderson's request for leave to proceed in forma pauperis because of his three-strike status, then the matter will be remanded to this court for appropriate action. If the court of appeals determines that this court was correct in concluding that § 1915(g) bars Henderson from taking his appeal in forma pauperis, the \$455 filing fee payment will be due in full immediately. Whatever the scenario, Henderson is responsible for insuring that the required sum is remitted to the court at the appropriate time. Also, whether the court of appeals allows Henderson to pay the fee in installments or agrees with this court that he owes it immediately, his obligation to pay the \$455 fee for filing his appeal will be entered into this court's financial records so that it may be collected as required by the Prison Litigation Reform Act.

ORDER

IT IS ORDERED that petitioner Titus Henderson's request for leave to proceed in forma pauperis on appeal is DENIED because three strikes have been recorded against him

under 28 U.S.C. § 1915(g) and he has not made the required showing of imminent danger of a serious physical injury in this case. Further, IT IS ORDERED that the clerk of court insure that Henderson's obligation to pay the \$455 is reflected in this court's financial records.

Entered this 23<sup>rd</sup> day of October, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge